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REPORT
101-536

AUTHORIZING AN EXCHANGE OF LANDS IN SOUTH DAKOTA AND COLORADO

OCTOBER 17 (legislative day, OCTOBER 2), 1990.—Ordered to be printed

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Mr. JOHNSTON, from the Committee on Energy and Natural Resources, submitted the following

REPORT

[To accompany H.R. 4567]

The Committee on Energy and Natural Resources, to which was referred the act (H.R. 4567) to authorize an exchange of lands in South Dakota and Colorado, having considered the same, reports favorably thereon without amendment and recommends that the act do pass.

PURPOSE OF THE MEASURE

The purpose of H.R. 4567, as ordered reported, is to authorize an exchange of approximately 12,274 acres of land located in South Dakota, which are currently owned by the Homestake Mining Company of California, for approximately 868 acres of Federal land in Colorado and an additional 40 acres of Federal land in South Dakota. The Act also conveys 477 acres of Forest Service land to Summit County, Colorado for use as a landfill upon payment to the United States of $25,000.

BACKGROUND AND NEED

The Homestake Mining Company began operations in the northern Black Hills of South Dakota in the late 19th Century, and currently owns large amounts of land in South Dakota and Wyoming. As a result of a recent inventory of its lands, Homestake identified some 12,274 acres in the Black Hills as surplus to its programs and needs. These lands, identified for disposal by Homestake, are adjacent to, or intermingled with, national forest lands and include

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lands identified by the Forest Service as having high-value recreational, scenic, natural and wildlife resources.

Accordingly, Homestake and the Forest Service embarked on an effort to identify national forest lands for which Homestake could exchange their surplus lands without detriment to the management of the national forest. Sufficient quantities of national forest lands suitable for such an exchange could not be found in South Dakota. The parties were, however, able to identify national forest lands in Colorado which were considered suitable for disposal, since much of the identified land is currently under permit to the Keystone and Cooper Mountain ski areas, and to Summit County.

Accordingly, H.R. 4567 directs the exchange of 12,274 acres of Homestake lands for 868 acres of Federal lands in Colorado and an additional 40 acres of Federal lands in South Dakota.

LEGISLATIVE HISTORY

S. 2474 was introduced by Senators Daschle, Pressler and Wirth on April 19, 1990. The Subcommittee on Public Lands, National Parks and Forests held a hearing on S. 2474 on September 26, 1990.

At the business meeting on October 10, 1990, the Senate Committee on Energy and Natural Resources ordered the House companion measure, H.R. 4567, favorably reported.

COMMITTEE RECOMMENDATIONS AND TABULATION OF VOTES

The Senate Committee on Energy and Natural Resources, in open business session on October 10, 1990, by a unanimous vote of a quorum present, recommends that the Senate pass H.R. 4567, as described herein.

The roll call vote on reporting the measure was 18 yeas, 0 nays, as follows:

YEAS	NAYS
Mr. Johnston	
Mr. Bumpers	
Mr. Ford	
Mr. Bradley	
Mr. Bingaman*	
Mr. Wirth	
Mr. Conrad	
Mr. Heflin*	
Mr. Rockefeller*	
Mr. McClure	
Mr. Hatfield*	
Mr. Domenici	
Mr. Wallop	
Mr. Murkowski	
Mr. Nickles	
Mr. Burns	
Mr. Garn	
Mr. McConnell	

*Indicates voted by proxy.

COMMITTEE AMENDMENT

During the consideration of this measure, the Committee first adopted an amendment in the nature of a substitute to S. 2891, the Senate companion. This amendment contained language identical to the text of H.R. 4567 as passed the House. The Committee then reported H.R. 4567 without amendment. A more detailed discussion of H.R. 4567 appears in the Section-by-Section Analysis portion of this report.

SECTION-BY-SECTION ANALYSIS

Section 1(b) defines the purpose of the bill.

Section 2 provides for the exchange of lands between the United States and Homestake Mining Company.

Subsection (a) provides that the exchange is conditioned on an exchange agreement between Homestake and the Secretary of Agriculture that embodies the terms and conditions of the Act.

Subsection (b) specifies that 12,274 acres of Homestake lands will be conveyed to the United States. Homestake will retain the mineral estate in these lands as well as its vested water rights. Exercise of any of the mineral rights shall be subject to regulations currently in effect concerning protection of the surface estate overlying such minerals. In addition, within the Spearfish Canyon area, any exploration or development of Homestake's retained mineral interests will be limited to only those methods and activities which will not disturb the surface of any lands within the canyon to be acquired by the United States pursuant to the exchange.

With respect to Homestake's retained water rights, this subsection provides that those water rights will be exercised in accordance with applicable Federal, State, and local law and in accordance with any subsequent cooperative agreements or undertakings between Homestake, the Forest Service, and South Dakota for protection and enhancement of the values of Spearfish Canyon.

Subsection (c) identifies the 864 acres of Federal lands in Colorado and 40 acres of Federal lands in South Dakota to be conveyed to Homestake. Any existing National Forest cabin permit sites within the 40-acre parcel conveyed to Homestake shall be sold to the existing permit holders, if application is made, for a price not to exceed the value of such lands. If such an application is not made, the individual cabin site shall continue to be permitted through the Secretary of Agriculture.

Subsection (c) further provides that the United States will retain the mineral estate in the lands to be conveyed to Homestake, and those retained mineral rights will be withdrawn from all forms of entry or disposal under the mining and mineral leasing laws.

Subsection (d) provides that patents issued for the lands to be conveyed to Homestake pursuant to the exchange are to include reservations to the United States for various rights of public access, for recreational and other purposes. The Secretary of Agriculture may enter into cooperative agreements with State or local units of government, or private nonprofit organizations as the Secretary deems appropriate, for the administration of such rights.

Section 3 sets forth the terms and conditions that would apply to the exchange authorized and directed by the bill.

Subsection (a) directs that the lands exchanged be of equal dollar value as determined by standard appraisal practices, and provides that if the values of the lands are not equal, they may be equalized by the payment of cash to the Secretary or Homestake, as long as the cash payment does not exceed 25 percent of the land value. In addition, it provides that the Secretary of Agriculture may offer Homestake a monetary credit against timber harvest payments which Homestake or its agents otherwise owe the Government, in lieu of any such equivalent payment that might otherwise be payable to Homestake.

Subsection (b) sets forth the procedures for appraisals of the lands to be conveyed.

Subsection (c) directs the Secretary of Agriculture, no later than 60 days after enactment, to begin negotiations with Homestake regarding the exchange agreement referred to in section 2. The subsection also provides that it is the intent of Congress that the exchange be completed within 270 days after enactment.

Subsection (d) provides for the addition of the South Dakota lands acquired pursuant to the exchange to the Black Hills National Forest.

Section 4 authorizes the conveyance of 477 acres of land to Summit County, Colorado for use as a landfill upon payment to the United States of $25,000. The conveyance is made subject to the execution of an agreement between the county and the United States that will permanently hold the United States harmless for, and will indemnify the United States against, any liability for costs arising from Federal ownership of the lands and their past use by Summit County or its licensees, employees, agents, successors, or assigns.

COST AND BUDGETARY CONSIDERATIONS

The following estimate of the cost of this measure has been provided by the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 12, 1990.

Hon. J. BENNETT JOHNSTON, Jr.,
Chairman, Committee on Energy and Natural Resources,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 4567, an act to authorize an exchange of lands in South Dakota and Colorado, as ordered reported by the Senate Committee on Energy and Natural Resources, October 10, 1990. We estimate that enactment of this legislation would result in costs to the federal government of between $1 million and $3 million. Such costs would likely occur in fiscal year 1992.

H.R. 4567 would authorize and direct the Secretary of Agriculture to trade specified federal lands in Colorado (868 acres) and South Dakota (40 acres) for private land holdings in South Dakota (12,274 acres). Mineral rights would not be included in such transfers. Lands acquired by the United States within or adjacent to the

Black Hills National Forest would be added to and administered as part of the national forest.

The act would require that the values of the lands to be exchanged be equal, and if they are not equal, that they be equalized by either cash equalization payments or the issuance of monetary credits (credits against any moneys owed for timber sales within the Black Hills National Forest). The Secretary of Agriculture also would be required to transfer to Summit County, Colorado approximately 477 acres upon payment of $25,000.

Based on information from the Forest Service, CBO estimates that the administrative costs resulting from enactment of H.R. 4567 would not be significant. However, costs to equalize the values of the lands would be between $1 million and $3 million. CBO assumes that this equalization would be made by the issuance of monetary credits in fiscal year 1992.

Monetary credits are considered to be direct spending authority and are counted as budget authority and outlays in the year they are issued. Monetary credits are also counted as offsetting collections when they are redeemed. However, such collections would be offset by the loss of timber receipts that would otherwise have been paid.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Theresa Gullo and Mitchell Rosenfeld, who can be reached at 226–2860.

Sincerely,

ROBERT F. HALE
(For Robert D. Reischauer, Director).

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out H.R. 4567. The Act is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of H.R. 4567, as reported.

EXECUTIVE COMMUNICATIONS

On September 10, 1990, the Committee on Energy and Natural Resources requested legislative reports from the Department of Agriculture, Department of the Interior and the Office of Management and Budget setting forth executive views on S. 2474, the Senate companion bill. These reports had not been received at the time the report on H.R. 4567 was filed. When the reports become available, the Chairman will request that they be printed in the Congressional Record for the advice of the Senate. The testimony provided by the Forest Service at the Subcommittee hearing for S. 2474 follows:

STATEMENT OF LARRY HENSON, ASSOCIATE DEPUTY CHIEF, FOREST SERVICE, U.S. DEPARTMENT OF AGRICULTURE

Mr. Chairman and members of the subcommittee: Thank you for the opportunity to offer our views on these bills.

S. 2474, LAND EXCHANGE WITH HOMESTAKE MINING COMPANY

S. 2474, Homestake Mining Company Exchange, would authorize an exchange of lands in South Dakota and Colorado and a transfer of lands in Colorado. It would authorize the Secretary of Agriculture to convey approximately 1,450 acres of National Forest System lands in Colorado and South Dakota to Homestake Mining Company in exchange for approximately 12,274 acres of land owned by Homestake in South Dakota. All but about 40 acres of the National Forest System lands are located in Summit County, Colorado.

S. 2474 would also authorize a transfer of about 325 acres of National Forest System land to Summit County at no cost. This would transfer the Summit County landfill currently on National Forest System lands to the county.

The land exchange for 12,274 acres of Homestake Mining Company land would significantly enhance management of the Black Hills National Forest. These lands include several thousand acres of quality wildlife habitat. Acquisition of about 20 miles of Spearfish Creek would be an outstanding addition to the National Forest System providing valuable recreational, scenic, natural, and wildlife resources to the public. The National Forest System lands proposed for conveyance are, for the most part, urban in nature and are suitable for exchange.

The Department of Agriculture supports the concept of acquiring by exchange the Homestake Mining Company lands in the Black Hills National Forest. Due to several substantive and technical problems with S. 2474, however, we must oppose the bill as currently drafted.

In June, we testified before the House Interior Subcommittee on National Parks and Public Lands and the House Agriculture Subcommittee on Forests, Family Farms, and Energy on H.R. 4567, the House companion to S. 2474. At those hearings we expressed concerns about mineral and water rights—especially in the Spearfish Canyon—and the provisions of the bill concerning the county landfill. Since then, we have been working with Homestake Mining Company to resolve these concerns, and are now in a position to report favorably on our progress.

After much discussion, we have agreed that Homestake could retain all mineral rights, as originally proposed, for the 12,274 acres conveyed to the United States, subject to the Secretary's regulations in 36 CFR 251.15. These regulations require Homestake to obtain a permit from the Forest Service prior to initiating any mineral related activities on the lands conveyed to the Secretary. We propose

that a copy of these regulations shall be attached to and become part of the warranty deed conveying the property.

In addition to the protection of resource values provided by the Secretary's regulations, Homestake has agreed to a "no surface occupancy" resriction for the 1,250 acres conveyed to the United States in Spearfish Canyon. This restriction prevents Homestake from occupying the surface of those lands for mining and exploration purposes, and protects the riparian, fisheries, and esthetic values being acquired in Spearfish Canyon.

Homestake officials have also agreed to ensure that in the unlikely event they exercise their rights for underground mining, they shall use only mineral exploration and development methods that do not impair the surface values of Spearfish Canyon. We propose that such an agreement be attached to and become part of the warranty deed conveying the property.

We have also reached an agreement with Homestake that it will exercise its reservation of water rights in accordance with Federal, State, and local laws, and execute cooperative agreements concerning water rights in the future.

We have evaluated South Dakota law and believe South Dakota State Law adequately and fairly deals with public interest issues concerning water rights.

The transfer of the landfill to Summit County raises two issues: first, the liability which might result from the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA) and, second, whether the land should be transferred without consideration. Homestake and Summit County have offered to pay $25,000 for the landfill, and the County has proposed to indemnify the United States against any liability through a "hold harmless agreement" authorized under Section 107(e) of CERCLA which would be executed before the transfer of title.

Substitute language reported out of the House Interior Subcommittee on National Parks and Public Lands and the House Agriculture Subcommittee on Forests, Family Farms, and Energy in June on H.R. 4567 addresses these concerns. Should S. 2474 be amended in similar ways, we believe that the exchange would be in the public interest.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the Committee notes that no changes in existing law are made by the act H.R. 4567, as reported.

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